

HOUSE BILL NO. 546

INTRODUCED BY J. POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PRIVATE ENTITY MAY NOT, AS A CONDITION OF PROPERTY OWNERSHIP WITHIN THE JURISDICTION OF THE PRIVATE ENTITY OR BY OTHER MEANS, PROHIBIT THE PLACEMENT OF A SIGN ADVOCATING THE ELECTION, APPOINTMENT, OR DEFEAT OF A CANDIDATE FOR PUBLIC OFFICE OR THE PASSAGE OR DEFEAT OF A BALLOT ISSUE ON PROPERTY BELONGING TO AN INDIVIDUAL OR JOINT OWNER WHO AUTHORIZES THE SIGN TO BE PLACED ON PROPERTY BELONGING TO THE OWNER OR ON COMMON AREAS IN WHICH THE OWNER OWNS AN UNDIVIDED INTEREST; ALLOWING FOR REGULATION OF SIGN SIZE AND PLACEMENT; AND AMENDING SECTIONS 70-1-521, 70-17-203, 70-17-204, 70-17-206, 70-20-306, 70-23-308, 70-23-506, AND 70-23-601, MCA; ~~AND PROVIDING AN APPLICABILITY DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Certain restrictions on political free speech contrary to public policy -- enforcement prohibited -- definitions.** (1) A person, homeowners' association, property owners' association, corporation, or other private entity may not, as a condition of property ownership within the jurisdiction of the private entity or by other means, prohibit the placement of a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue on:

- (a) property belonging to individual or joint property owners who authorize the placement of the sign; or
- (b) common areas in which an owner owns an undivided interest.

(2) A PERSON, HOMEOWNERS' ASSOCIATION, PROPERTY OWNERS' ASSOCIATION, CORPORATION, OR OTHER PRIVATE ENTITY MAY IMPOSE LIMITS ON THE SIZE OF SIGNS ALLOWED TO BE DISPLAYED WITHIN THE JURISDICTION OF THE PRIVATE ENTITY AND MAY REGULATE THE LOCATION OF SIGN PLACEMENT AND THE TIME PERIOD DURING WHICH SIGNS MAY BE DISPLAYED.

~~(2)~~(3) An ordinance, covenant, contract term, or other provision, whether agreed to or not between the homeowners' association, property owners' association, corporation, or other private entity and the owner or tenant, is contrary to the public policy of this state. A court may not enforce the terms of an ordinance, covenant, contract term, or other provision that is contrary to public policy under this section.

(3)(4) As used in this section, "ballot issue" and "candidate" have the meanings provided in 13-1-101.

Section 2. Section 70-1-521, MCA, is amended to read:

"70-1-521. Grant may inure to benefit of stranger. ~~A~~ Except as provided in [section 1], a present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party ~~thereto to the grant.~~"

Section 3. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) ~~Every~~ Except as provided in [section 1], every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee; and

(b) conservation easements pursuant to 76-6-209.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 4. Section 70-17-204, MCA, is amended to read:

"70-17-204. Who bound by covenant. ~~A~~ Except as provided in [section 1], a covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property."

Section 5. Section 70-17-206, MCA, is amended to read:

"70-17-206. Apportionment of burdens and benefits. ~~Where~~ Except as provided in [section 1], if several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, ~~it the covenant~~ must be apportioned among them according to the value of the property subject to it held by them respectively if ~~such the~~ value can be ascertained and, if not, then according to their respective interests in point of quantity."

Section 6. Section 70-20-306, MCA, is amended to read:

"70-20-306. Responsibility of heirs of covenantor -- certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are, except as provided in [section 1], answerable upon ~~such the~~ covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law."

Section 7. Section 70-23-308, MCA, is amended to read:

"70-23-308. Contents of bylaws. ~~The~~ Subject to [section 1], the bylaws must provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102, that constitutes a quorum;

(3) the election of a presiding officer, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307."

Section 8. Section 70-23-506, MCA, is amended to read:

1 **"70-23-506. Compliance with bylaws, rules, and covenants required -- action.** Each Except as
2 provided in [section 1], each unit owner shall comply with the bylaws and with the administrative rules adopted
3 pursuant ~~thereto to the bylaws~~ and with the covenants, conditions, and restrictions in the declaration or in the
4 deed to his the owner's unit. Failure to comply ~~therewith shall be~~ with the bylaws and rules is grounds for an
5 action maintainable by the association of unit owners or by an aggrieved unit owner."
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7 **Section 9.** Section 70-23-601, MCA, is amended to read:

8 **"70-23-601. Contents of deed or lease of unit.** ~~The~~ Except as provided in [section 1], the deed or lease
9 of a unit ~~shall~~ must contain:

- 10 (1) a description of the land, the name of the property, and the recording index numbers and date of
11 recording of the declaration;
12 (2) the unit designation of the unit;
13 (3) the use for which the unit is intended;
14 (4) the percentages of undivided interest in the common elements appertaining to the unit;
15 (5) any further details the grantor and grantee or lessor and lessee may consider desirable."
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17 NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an
18 integral part of Title 70, chapter 1, and the provisions of Title 70, chapter 1, apply to [section 1].
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20 ~~—— NEW SECTION. **Section 11. Saving clause.** [This act] does not affect rights and duties that matured,~~
21 ~~penalties that were incurred, or proceedings that were begun before [the effective date of this act].~~
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23 ~~—— NEW SECTION. **Section 12. Applicability.** [This act] applies to an ordinance, covenant, contract term,~~
24 ~~interest in real property, or other provision adopted, agreed to, arising, or transferred on or after October 1, 2009.~~
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